

Feb. 21, 2017

Good Morning Major General Wehr & Col. Calkins,

M.G. Wehr and staff,

Thank you for the meeting of February 3, 2017 in your Vicksburg office. We appreciate you and your staff's time, patience and consideration of our nearly two hour discussion. As know, Kelly Bopray, Kevin Pierce of Hawkes Company's and myself outlined examples of our Frustrations and Capricious treatment by veteran & senior corps officials of the St Paul District. I'm glad you and you staff have reviewed the recent vindication, of the (Hawkes decision)13-cv-00107-ADM-TNL doc 85 (1/24/17)

As I said it speaks for itself (especially pg. 26) of the decision. I'm sorry you missed Mr. Pierce's comments. I hope Mr. Bodron briefed you on the balance of the discussions and Mr. Pierce's concerns.

Col. Calkins,

Thank you for text and e-mail, in response to our inquiry.

Today marks the **601st day** in our quest, to get a Fair and Equitable response to the "Meadows Business Parks' AJD request. We are still very troubled on how the St. Paul District can submit a package, for referral or confirmation to the EPA or COE. When the July 2016 site data sheets, are still filled with falsified information and unsubstantiated data from the 2016 site visit.(as responded to Jeff Olson by e-mail on 12/16/16). Your own (Jeff Olson) agreed in our Nov. meeting in your office. The 2003 references or data was inappropriate! Then Kelly Bopray asked the same question in our 2/3/17 meeting in Vicksburg." Would the corps accept a delineation he prepared from 2008 or 2010?" The response was NO, there is a 5yr. statue of limitations. **"So why should we accept 2003 data and references" (14 yrs old)** we're not, because it will not hold up in court. Besides the statue of limitation issue, the 2003 hydrology data was preformed in Apr/May (Pre- WETS table growing season) and only proved 8 days of hydrology (outside the parameters of the "87" manual). The last frost in 2016 was 25 deg. on (May 15, 2016) see attached. And today's standard requires 14 continuous days of the growing season. So you didn't meet the standard then... and in the July 2016 investigation when we had (125-150%) the normal precipitation. No hydrology was present in any of the disputed (25inches) deep pits. Kelly Bopray a (20yr veteran & licensed soil scientist) Charlie Newling & Ray Kagel's who's (record speaks for them self) have rebutted the Jr. Zibung's forced interruptions and unsubstantiated positions.

Then on top of all that! How can the COE review, be addressed or confirmed by Ms. Stacy Jensen?

The same Stacy Jensen (St. Paul Acting Chief, Regulatory Branch) who ignored us from Jan-May. Then finally responded to our numerous requests on (5-10-16) to Ray Kagel

She's Bias and that's not a second set of eye's !

Gentlemen,

Let's get past this, and move on to more important issue's we both should be addressing! Let's admit this crusade by Egger's, Konickson and Adamski is long overdue. I know you have "Big Picture" issues you both need to address. Don't make me go to D.C. and firm up my next appointments with Speaker Ryan and Secretary Pruitt. **Because I will!**

Let's review:

- You have not and can not prove a surface water connection (14 days of the growing season), because the site is isolated and surrounded by uplands & roads (as required by Rapanos) (2006)
- You have yet to demonstrate or prove a significant nexus (Rapanos) 547 U.S. 715, 778-82 (2006) to the Wisconsin River (TNW) 46 miles away. Like (Hawkes) you will need to prove, “the required nexus must be assessed in the term’s of the (CWA) goals and purposes” which are “to restore and maintain the chemical, physical and biological integrity of the nation’s waters” and also “When in contrast, wetlands effect on water quality are speculative or insubstantial. They fall outside the zone fairly encompassed by the statutory term navigable waters”.
- The corps has been given ample opportunity to substantiate your position. On 10/19/16 you chose to conclude any further collection of data. As I said, don’t come back with a partial or incomplete response now.
- Five (5) highly qualified and respected consultants (**Sander’s, Straw, Bopray, Kagel & Newling**) have been to the site, numerous times & disagree with your preliminary positions. Two are original authors or contributors (Sander’s & Newling) of the “87” delineation manual. So the gentlemen who wrote the book, disagree with the agents enforcing today’s implications.

Even though the Corps, lacks the sufficient evidence to support the exercise of CWA jurisdiction over this specific wetland at issue. We will offer you one last opportunity to approve the Bopray delineation as presented in (June 2015) with the collaborating reports and data of (Bopray, Kagel & Newling) thereafter. There is sufficient evidence to approve the entire site as presented.

Let’s not have a second Judge have to characterize this as:

the Corps’ “transparently obvious litigation strategy”—leaving Plaintiffs without an adequate remedy until “the Corps . . . achieve[s] the result its local officers desire, (Hawkes-2016) pg.26

or

Leaves most property owners with little practical alternative but to dance to the EPA’s [or to the Corps’]tune.” Id. at 1002 (quoting Sackett v. EPA, 132 S.Ct. 1367, 1375 (2012) (Alito, J., concurring) **But that was changed with (Hawkes decision)**

or

Confirm the St. Paul District is once again arbitrary and capricious; in their mission of conducting fair and equitable CWA Jurisdiction interruptions!

An expedited response and AJD is appreciated.

Pete Thorson

The Meadows Business Park